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EXAMINER

WEINSTEIN, LEONARD J

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/827,466
Filing Date: April 19, 2004
Appellant(s): HERBERT ET AL.

Anthony P. Cho
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 29, 2008 appealing from the Office action mailed August 29, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

The copy of the appealed claims contained in the Appendix to the brief is correct.

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(8) Evidence Relied Upon

2002/0127120	Hahn et al.	09-2002
6269299	Blotenberg	07-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-19, and 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hahn 2002/0127120 in view of Blotenberg 6,269,299. Hahn teaches the following limitations for a sealed compressor assembly comprising: a compressor pump unit 20 and a motor 24 for driving said compressor pump unit, a housing 21 enclosing said compressor pump unit, a receiver (¶ 0007) for receiving a first signal, and a memory unit 26 in communication with said receiver, said memory unit for storing information relating to said compressor (paragraph 9), said receiver and said memory unit mounted to said compressor (clearly seen in figure 2); a

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microprocessor in communication with said receiver and said memory unit (§ 0009); a transmitter (§ 0007) in communication with said microprocessor, said transmitter for transmitting a second signal; wherein said information relating to said compressor comprises information relating to the manufacture of said compressor (§ 0018-0020); wherein said information relating to said compressor comprises information relating to the service of said compressor (paragraphs 18-20); wherein said information relating to said compressor comprises information relating to the environment of said compressor (§ 0018-0020); wherein said information relating to said compressor comprises information relating to the use of said compressor (§ 0018-0020); wherein said first signal is an electric signal (§ 0017); wherein said receiver and said memory unit are mounted to said housing (clearly seen in figure 2).

Hahn teaches all of the above cited claim limitations, but fails to teach the following claim limitations taught by Blotenberg: a receiver for receiving a first wireless signal (Abstract); a compressor pump unit with a receiver for receiving an a radio frequency signal (Abstract), including a second receiver 10 and a second transmitter 10, said second receiver and said second transmitter for remote communication with said first receiver 5 and said first transmitter 5 (col. 5 lines 56-67); a second transmitter 10 and a second receiver 10 form part of a portable remote unit (Abstract); a portable remote unit includes a remote unit microprocessor in communication with said second transmitter and said second receiver (Abstract); and a memory unit 7 is independent of a compressor microprocessor, as disclosed by Boletnberg as a first programming device 5 which processes a control command (col. 5 ll. 56-60). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the second receiver and transmitter in Hahn to enable it the reception of a radio frequency, thus a wireless

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signal, to portable remote location as a means for adjusting compressor control parameters from a central or off- site location (Blotenberg, col. 3 lines 24-33).

(10) Response to Argument

In response to Appellant's arguments with respect to claims 1 and 11

In reference to claims 1 and 11 the appellant argues that the combination of Hahn in view of Blotenberg fails to teach a receiver for receiving a first wireless signal mounted on a compressor. The appellant further argues that the microprocessor taught by Hahn is non-analogous to the wireless receiver of Blotenberg. The wireless receiver of Blotenberg is referred to as a programming device, and appellant contends substituting the programming device of Blotenberg for the microprocessor of Hahn would render the compressor of Hahn inoperable.

- In response to appellant's arguments that a combination of Hahn with Blotenberg fails to teach a receiver for receiving a first wireless signal mounted on a compressor, the examiner disagrees. As a matter of priority the examiner notes that appellant argues that Blotenberg does not teach a wireless receiver that is mounted on a compressor. In response the examiner notes that Blotenberg was not relied upon to teach a mounting configuration that includes a receiver being mounted on a compressor. Rather the examiner cited Hahn as teaching a receiver that was mounted on a compressor. The examiner identified element 26 of Hahn as being a receiver and in the embodiment of figure 2 of Hahn, element 64 is clearly mounted on to a compressor housing 62. Hahn discloses (¶ 0025) "The control 64 can be designed to provide the function of the control 26." Figure 2 was cited as

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evidence that Hahn provided a teaching of a receiver that was mounted on the compressor in the final office action of August 29, 2007.

- In response to appellant's argument that the microprocessor taught by Hahn is non-analogous to the wireless receiver of Blotenberg, the examiner disagrees. The microprocessor 26 of Hahn receives signals from temperature sensors 30, 36, and 42 and pressure sensors 32 and 38, which indicate a condition/performance of operation for the compressor unit 22. The programming device 5 of Blotenberg is connected through a programming line 6 to a control and regulating device 4 of a piece of machinery 1 that includes a compressor 1.2. The programming device 5 of Blotenberg is wirelessly connected to another programming device 10 that is located off site and thus transmits and receives signals wirelessly from programming device 10. The programming device 5 is analogous to the microprocessor 26/64 of Hahn because it polls and/or is capable of polling the operating parameters of the machinery 1 (including compressor 1.2) at a given time. Blotenberg discloses:

(col. 3 ll. 67 – col. 4 ll. 5)

"If the first programming device of the piece of machinery permits the current operating parameters to be polled and be displayed on the display screen connected to it, the second programming device in the central control station also displays the same parameters."

(col. 5 ll. 40-42)

"Current operating data of the piece of machinery 1 are also transmitted via programming line 6 to the first programming device 5."

Clearly the programming device 5 of Blotenberg is analogous to a microprocessor 26. Blotenberg receives signals both from compressor 1.2 (as part of machinery 1) and an offsite programming device 10. The appellant's argument that the microprocessor of Hahn cannot be relied upon because it does not receive a signal beyond a compressor is immaterial to the substitution that the examiner suggests.

Whether or not a signal is being received beyond the compressor has no impact and is not commensurate with the scope of the claims which require "a receiver for receiving a first wireless signal." The wireless signal is not required or limited to be a signal that relates to the control or operating characteristics of the compressor in any way. The only requirement is that the signal be a wireless signal and received by a receiver mounted on the compressor.

- In response to appellant's argument that substituting the programming device of Blotenberg for the microprocessor of Hahn would render the compressor of Hahn inoperable, the examiner disagrees. As discussed the programming device 5 of Blotenberg is capable of performing the function of obtaining data pertaining to the operation of a compressor which appellant argues would be absent if a substitution were made. The examiner further notes that any substitution of the programming device 5 of Blotenberg for the microprocessor 26 of Hahn, would include an incorporation of the control and regulating system 4 and the offsite programming device 10 taught by Blotenberg. Thus appellant's argument that a substitution would render a compressor of Hahn inoperable fails to consider the operational capabilities of both the programming device 5 alone, and the system including elements 4, 5, 6, and 10 which would be within the scope of a substitution as suggested by the examiner. The appellant's argument that a control of a compressor in Hahn is accomplished locally to the point that such control could not be accomplished "by the remote communication of information taught by Blotenberg" is noted. However the examiner directs attention to the disclosure of Blotenberg stating:

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(col. 6 ll. 10-16)

"... the amount of functions of the first programming device 5 may be reduced to such an extent that this device 5 may be reduced to such an extent that this device is only able to receive the control commands from the second programming device 10 in the central control station 14 and to implement them such that the necessary actions will be performed."

Thus Blotenberg teaches that even when the functionality of the one the programming devices is reduced, control of a piece of machinery including a compressor is still accomplished by manner of remote communication.

It is further noted by the examiner that appellant's invention makes use of remote communication between devices to retrieve data and affect operation of a device. The examiner notes that it is well known in the art to transmit both control signals and operating data wirelessly between a piece of equipment and a control/memory display device. One could look to such items as a garage door opener, or a remote control toy car that tells the user how fast or what gear the toy car is in as examples.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Conclusion

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Leonard J Weinstein/

Examiner, Art Unit 3746

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Conferees:

/Devon Kramer/

Devon Kramer, SPE AU 3746

/Janet C. Baxter/

TC 3700 TQAS